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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/803,868

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Arieh Jehuda Polak

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SUITE 115

MIAMI, FL 33180

EXAMINER

CHAUDHRY, SAEED T

ART UNIT

PAPER NUMBER

1792

MAIL DATE

DELIVERY MODE

04/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/803,868

Applicant(s)

POLAK, ARIEH JEHUDA

Examiner

Saeed T. Chaudhry

Art Unit

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 98-137 is/are pending in the application.
- 4a) Of the above claim(s) 98-117 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 118-137 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Election/Restriction

Applicant's election with traverse of claims 118-137 in Paper No. 01282008 is acknowledged. The traversal is on the ground(s) that the rejection recites several claims elements that are missing in the method claims as the basis for this argument. The applicant respectfully submits that this reason is not consonant with the law. Indeed, it is entirely normal and expected, within the same patent, to have claims with variously fewer or more claimed elements, or even distinct claimed elements. This is not found persuasive because elements required to practice method do not required by the claimed apparatus, therefore, search for the method claims are not required for the apparatus claims and there would be serious burden on the examiner to examine both the method and apparatus claims together because of their divergent subject matter such as the apparatus can be used for players in the field or supply mist of water and medicine on the crops.

The requirement is still deemed proper and is therefore made FINAL.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. § 119, which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

Claims 118-137 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 118 and 128, recite limitations “at a point removed from a target animal at a given location”, and “a network of point removed from a plurality of target animals” respectively, it is confusing and not clear, what is meant by these limitations? What point is removed or the animal is removed?

The phrase “beam-like” render the claims 118 and 128 indefinite because the claimed process includes steps not actually disclosed (those encompassed by “beam-like) and the scope of the claim is unascertainable. Ex parte Caldwell, 1906 CD 58, (Commr. 1905).

Claims 118 and 128 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 118 and 128 recite limitations, “up to 20 m/sec”, “up to 7 meters”, “about 2 atm” and “5 l/hr to about 50 l/hr”, there is no support for these limitations. Since up to means from “zero to that limit” and zero is not supported by the specification. Also, “about 2 atm” and “5 l/hr to about 50 l/hr” are not disclosed by the specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 118-121, 124-126, 128-131 and 134-136 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terrell et al.

Terrell et al (6,578,828) disclose a method for cooling live stock. One or more cooling fans are connected to programmable oscillation means, enabling the herds man to program fan oscillation according to the location of the livestock. Water is injected under high pressure into the air stream of the fans to create a fog. The system is also programmable according to various environmental conditions, including temperature, humidity, and wind velocity. The pressure and volume of the injected water are programmable and may be adjusted by the controller according to the observed environmental conditions. The livestock cooling system may further comprise controller means for controlling the oscillation means and the means for injecting water droplets into the air stream. The controller means comprise, in part, a plurality of sensing devices positioned to sense environmental conditions and adapted to produce a signal in response to those conditions, a position indication device to determine the rotational position of the fan, where the position indication device is adapted to produce a signal in response to the rotational position.

A variety of different environmental conditions may be sensed by the sensing devices and inputted to the controller means, including temperature, humidity, wind velocity, intensity of sunlight, and the position of the sun with respect to the structure. FIGS. 1 and 2 show the major components of a typical fan 20 used in the disclosed system. Depending upon the particular application, a plurality of similar fans 20 may be used in the system. Each fan comprises a

blade, not shown, enclosed within housing 22, a motor 24 attached to the housing 22 for rotating the blade, a grill 26 attached to the front of the housing 22, a mist ring 28 attached to the grill 26, nozzles 30 connected to the mist ring 28, a water supply line 32 for providing high pressure water to the nozzles 30, power cable 34 for providing electrical power to the motor 24, motor starter 36 for starting motor 24, and mounting bracket 38, which supports the weight of fan 20.

Water droplets are injected into the air stream 44 created by each fan 20. Water is delivered to the mist ring 28 of each fan 20 through a high pressure water line 32. Stainless steel or other corrosion resistant materials with acceptable pressures ratings are acceptable materials for construction of the mist ring 28. A plurality of nozzles 30 are attached to the mist ring 28. Nozzles 30 may be screwed into female connections welded to mist ring 28, or otherwise attached (see col. 3 line 65 through col. 6, line 46 and claims).

It would have been obvious at the time applicant invented the claimed process to use the process of Terrell et al for purpose of cooling the animals with mist of air and water. The reference fails to specify the velocity of air steam, water pressure and volume, diameter of the mist steam and distance from the point. One of ordinary skill in the art would manipulate the water pressure and volume of water since reference discloses to decrease or increase the pump flow rate for controlling the pressure of the water. One of ordinary skill in the art would have control the air stream velocity by changing the speed of air generating fan, since it is known in the art to increase or decrease the air stream by increasing or decreasing the fan rotation. It is known in the art for generating air steam with different diameter size fans. Therefore, one of ordinary skill in the art would used fan which generate 7 feet air beam and provide the air stream

up to 16 feet distance from the fan. One would use plurality of fans or a single fan to control the temperature of the animals or an animal. The reference discloses to oscillate the fan up to 270 degrees. Therefore, one of ordinary skill in the art would restrict the fan movement to desired rotation to reduce the cover area for mist spraying. One of ordinary skill in the art would have intermittently supply the water to the nozzle since Terrell et al disclose to control the water pressure and volume by controlling the pump speed and when the humidity of the environment do not require to have water mist.

Claims 122-123, 127, 132-133 and 137 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terrell et al in view of Roach et al.

Terrell et al were discussed supra. However, the reference fails to disclose second axis of rotating air stream.

Roach et al (6,257,501) disclose a method of spraying mist of water for cooling effect. An electric fan has horizontal axis which swing in up and down position with respect to the floor (see col. 2, lines 42-52).

It would have been obvious at the time applicant invented the claimed process to incorporate horizontal axis as disclosed by Roach et al into the process of Terrell et al to manipulate the air stream direction from up or down position to cover all the areas. Since the axis disclosed by Roach et al is horizontal. Therefore, it would have been obvious to change the air stream direction by gravity.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saeed T. Chaudhry whose telephone number is (571) 272-1298. The examiner can normally be reached on Monday-Friday from 9:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Michael Barr, can be reached on (571)-272-1414. The fax phone number for non-final is (703)-872-9306.

Art Unit: 1792

When filing a FAX in Gp 1700, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communication with the PTO that are for entry into the file of the application. This will expedite processing of your papers.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Saeed T. Chaudhry

Patent Examiner

/Michael Barr/

Supervisory Patent Examiner, Art Unit 1792